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The Belles

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AN OPEN LETTER TO COLLEGE AND UNIVERSITY STUDENTS

NEW DUI LAWS TO GO INTO EFFECT

On October 1, 1983, the new Safe Roads Act will go into effect. The following is an open letter to all students from Heman Clark, Secretary of Crime Control and Public Safety, outlining the points of the act which most directly apply to college and university students.

On October 1, 1983, North Carolina will have a new set of laws dealing with those who operate a vehicle while impaired by alcoholic beverages or any other impairing substance. The Safe Roads Act of 1983 does much more than raise the drinking age for beer and unfortified wine to 19. We would like for the students attending colleges and universities to be aware of the new law.

Perhaps the best way to explain some of the comprehensive provisions of the new law is to state a hypothetical case involving a student—we will call him Joe—stopped by a State Highway Patrolman for driving under the influence of an impairing substance.

Joe may have been stopped at one of the roadblocks law enforcement agencies can now establish under the Safe Roads Act to check for drunk drivers. He may have been stopped because the trooper saw him drinking a beer while driving. Under the Safe Roads Act, it is unlawful for the driver of a vehicle to consume any alcoholic beverage while driving.

Under the new law, Joe can be arrested and charged under the single offense of impaired driving. There are no lesser included offenses, such as careless and reckless driving after drinking, in the new law; thus, there will be no more plea bargaining. There is only one charge, and it can be proved in one of two ways:

(1) By showing the driver's

physical or mental faculties are appreciably impaired by an impairing substance or;

(2) By showing the driver's alcohol concentration (AC) is 0.10 or more.

If Joe refuses to submit to a chemical test, his license will be revoked for one year. He can apply for limited driving privileges only after surrendering his license for six months of the revocation.

If Joe registers 0.10 AC or more on a chemical test, or refuses the test, he will be taken before a magistrate and his license will be suspended immediately for 10 days. This is mandatory. No one gets off. Out-of-state students will have their privilege to drive in North Carolina suspended for 10 days, just the same as students licensed in North Carolina.

If the magistrate determines Joe is too impaired to be released, the magistrate is empowered under the act to hold Joe for up to 24 hours or until a responsible, sober adult will take responsibility for him. In no event may Joe be held for more than 24 hours.

Next, Joe will have a trial on the charge. If Joe is convicted of driving while impaired, the law requires the judge to hold a sentencing hearing where Grossly Aggravating Drunk Driving (GADD) factors, aggravating factors and mitigating factors are presented by the prosecutor and defense attorneys. The judge must weigh these factors in imposing sentence.

If two GADD factors (a prior impaired driving offense in the past seven years, driving with revoked license for an impaired offense, causing an accident resulting in serious injury to another) are present, there is a mandatory minimum jail term of 14 days and Joe can be fined up to \$2,000. If one GADD factor is present, Joe faces a mandatory minimum seven days in jail and a fine up

to \$1,000. If Joe has two or more prior convictions for driving impaired within seven years, punishment is the same as if he had two GADD factors.

If no GADD factors are present, the judge weighs the aggravating and mitigating factors. If aggravating factors outweigh mitigating factors, Joe can be sentenced to a minimum of 72 hours in jail, or 72 hours of community service or 90 days without driving or a combination of all. He also faces a fine of up to \$500. If aggravating and mitigating factors balance out, Joe faces a sentence of 48 hours in jail, 48 hours community service or 60 days without driving or a combination of all. Additionally, Joe can be fined up to \$250. If the mitigating factors outweigh the aggravating factors, Joe faces a jail term of 24 hours, or 24 hours community service or 30 days without driving or a combination of all. Joe can be fined up to \$100.

Some aggravating factors are: gross impairment or an AC of 0.20 or more; especially reckless driving; an accident causing over \$500 damage or personal injury; driving while license revoked; two or more 3-point motor vehicle offenses within 5 years, or one or more prior convictions of DWI or more than 7 years old; speeding to elude arrest; speeding more than 30 miles per hour above the posted limit; and passing a stopped school bus.

Some mitigating factors are: slight impairment solely from alcohol, AC of 0.11 or less; slight impairment solely from alcohol and no chemical test available; generally safe driving at time of offense; no serious traffic offenses within past 5 years; impairment caused by lawfully prescribed drug; and voluntary submission to treatment before trial.

If this is Joe's first impaired driving offense, he will lose his driving privileges for

one year. He is eligible for a severely curtailed limited driving privilege only after he has served a court-ordered period of vehicle non-operation. If it is Joe's second offense, he loses his license for four years and can get no limited privilege. Revocation is permanent for the third offense.

In matters of license revocation for out-of-state students, North Carolina has reciprocity with most states for impaired driving crimes. The North Carolina Division of Motor Vehicles would send the report of your conviction to your home state and that state could apply the sanction. In any event, North Carolina will revoke your privilege to operate a motor vehicle in this state.

If Joe holds a North Carolina provisional license (issued to 16- and 17-year-olds) and is convicted of DWI or refuses to take a chemical test, or is caught driving with any amount of alcohol or any impairing substance in his system (excluding prescriptions taken in a lawful amount), his license will be revoked until he is 18, or for 45 days, whichever is longer.

The law also provides a one-year license revocation if:

--An underage person attempts to purchase or purchases an alcoholic beverage;

--An underage person aids or abets another to attempt to purchase or purchases an alcoholic beverage;

An underage person attempts to purchase, purchases or possesses alcoholic beverages by using or attempting to use a fraudulent driver's license or other I.D., or by lending his driver's license or any other I.D. for that purpose.

If Joe registers 0.20 or more on a chemical test, he will be referred to an appropriate public or private facility for treatment and counseling. AC levels in those ranges are indicative of problem drinkers. Problem drinkers cause the

majority of accidents involving impaired drivers.

If Joe is caught for DWI after his license is revoked, he faces forfeiture of his vehicle.

Another important aspect of the Safe Roads Act which may affect students is the "Dramshop" provision. Under this provision, negligent sale of beer, wine or liquor to an underage person may subject the seller to civil liability if the underage person then consumes the beverage and as a result of consuming the beverage has an accident while driving impaired. This provision led operators of establishments which sell alcoholic beverages to ask for the power to hold a person's I.D. for a reasonable time to check the I.D.'s validity. The seller must tell the person why he is holding the I.D.

In addition to the criminal and administrative sanctions mentioned above, Joe faces a host of other problems arising from a conviction for DWI. If he is a first offender, he will be required to pay for and attend classes at one of the state's Alcohol Drug Education Traffic Schools. His car insurance will climb precipitously. Whatever it cost before conviction, it will now cost him 395 percent more—395 percent more for three years!

It is not worth it to drink and drive. Your personal costs are too high. The costs to society are too high. If you drink, don't drive. If you drive, don't drink.

Sincerely,
Heman R. Clark

